



## CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 20, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0374

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.100 De-Escalation. 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

It was alleged that the Named Employee may have acted contrary to the Department's de-escalation and professionalism policies.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

#### ***8.100 De-Escalation. 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities***

Officers, including Named Employee #1 (NE#1), were dispatched to a trespass call at Northwest Hospital. When the officers arrived, they made contact with the individual who was alleged to be trespassing (referred to here as the "Subject"). For a period of 10 to 12 minutes, the officers tried to convince the Subject to leave the hospital; however, he continually refused to do so and argued with the officers. NE#1 spoke to the charge nurse. She confirmed that the Subject had been asked to leave the hospital but did not do so. She said that there was no further medical attention that could be provided to him. She also noted that the Subject had engaged in this behavior before.

NE#1 approached the Subject and told him that he needed to go and that no other medical attention would be provided. The Subject raised his voice and spoke over NE#1, continuing to argue. NE#1 eventually stated that they were not going to continue having a circular conversation. Another officer told the Subject that if he did not get up and leave, he would be arrested. The Subject got up and began to walk towards the door. NE#1 walked with him and continued to say: "Let's go." The Subject stopped by the door and turned to face NE#1. He stated that he was not going to go until he was ready to do so. NE#1 moved towards him.



At that time, the Subject leaned towards NE#1. NE#1 extended his hand as if to hold the Subject away from him. The Subject struck NE#1's hand, swiping it away. NE#1 then pushed the Subject back towards the door. NE#1 drew his Taser and pointed it at the Subject. While doing so, NE#1 stated: "Get out of here. Get out of here. I'm tired of talking to you." The Subject muttered at NE#1, turned around, and began to walk out of the door. NE#1 followed him and said: "Get the fuck off the property." The Subject asked for NE#1's name and badge number and NE#1 provided that information. The Subject was also given an SPD business card. He then rode away from the hospital on his bicycle.

OPA reviewed the Body Worn Video (BWV) of this incident while evaluating a separate case. OPA initiated this investigation to evaluate whether NE#1's words and actions were consistent with the Department's de-escalation and professionalism policies.

"De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance." (SPD Policy 8.100-POL-1.)

The policy further instructs that: "When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution." (*Id.*) Officers are also required, "when time and circumstances permit," to "consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors" such as "mental impairment...drug interaction...[and/or] behavioral crisis." (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident "when deciding which tactical options are the most appropriate to bring the situation to a safe resolution." (*Id.*)

De-escalation is inarguably a crucial component of the Department's obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department's policy and expectations.

OPA initially alleged that NE#1 may have violated the de-escalation policy in two main respects. First, his words and demeanor towards the Subject may have escalated the incident unnecessarily. Second, his drawing and pointing his taser at the Subject may have been unwarranted and considered improper escalation.

Based on a review of the evidence, OPA ultimately finds that NE#1 did not violate the Department's de-escalation policy. In reaching this conclusion, both the BWV and NE#1's interview were determinative for OPA. With regard to the video, it clearly showed that NE#1 initially tried to take a measured tone with the Subject and did not begin to raise the volume of his voice until the Subject repeatedly refused to walk out of the hospital. In addition, the video also showed that the pointing of the Taser by NE#1 was in direct response to the Subject swiping his hand away, which technically constituted an assault. The Subject was already escalated at that time, primarily due to his frustration with the hospital and the fact that he did not want to leave, and it did not appear that NE#1's actions caused this to occur.

OPA also found NE#1's interview to be compelling. He clearly explained what he did and why he did it. He stated that he tried to gain the Subject's voluntary compliance but that he and other officers were unable to get through to him, even after over ten minutes of negotiations. NE#1 also noted that, while still trying to convince the Subject to



leave, the Subject physically assaulted him. NE#1 stated that, at this point, it was no longer safe or feasible to continue to de-escalate. OPA agrees and finds that NE#1 did not violate the Department's de-escalation policy when he drew his Taser and pointed it at the Subject.

For the above reasons, OPA finds that NE#1 did not act contrary to SPD's de-escalation policy. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

### **Named Employee #1 - Allegation #2**

#### ***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-10.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*) Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

Whether NE#1's statements were escalating is discussed in the context of the de-escalation allegation. Here, OPA considers the profanity used towards the Subject by NE#1 when he told the Subject to get the "fuck off of the property." OPA interprets SPD policy to flat-out prohibit profanity when used as an insult. However, the policy does not specifically discuss profanity used in other circumstances. As a general matter, OPA has found that, where profanity is used in the heat of the moment by an officer – for example, telling an armed subject to "drop the fucking gun" – it does not violate policy. The situation in this case is a little different as, at the time the profanity was used, the Subject was already walking out of the hospital. While the Subject was certainly difficult and argumentative, he did not appear to pose an exigent threat at that time and seemed to have calmed down. Accordingly, the question here is whether NE#1's specific use of profanity violated policy.

OPA concludes that, absent modifications to the policy to make it clear that such comments are impermissible and training to that revised policy, it would be incorrect to deem NE#1's statement to be improper and warranting of discipline. It is OPA's understanding that the Office of Inspector General for Public Safety (OIG) may be evaluating this exact issue in the future, and OPA intends to flag this case for them. It may very well be that, as a result of the OIG's work, this policy is changed to more clearly govern the situation that arose here.

In the absence of those changes, and even though OPA does not find a policy violation, OPA believes that NE#1 would benefit from additional counseling and retraining. As such, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should be counseled that, where possible, he should avoid using profanity. NE#1 should be reminded that his BWV can be reviewed at any time and, as such, he should continue to be mindful of how he conducts himself. OPA does not believe that this will be an issue for NE#1 as he has no



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prior history of professionalism and is a thoughtful and hard-working officer. This counseling and any associated retraining should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**